IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE ACTING CHIEF JUSTICE MR.K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 13TH APRIL 2007 / 23RD CHAITHRA 1929

ST.Rev..No. 122 of 2007

TA.31/2006 of SALES TAX APPELLATE TRIBUNAL, ADDL.BENCH, KOZHIKODE.

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PETITIONER/APPELLANT/ASSESSEE

M/S.R.TECH STEEL ENGINEERING FURNITURE DEALERS, PACHAPOIKA KUTHUPARAMBA, REP. BY MANAGING PARTNER, SMT.SREEDHARI RAGHUNATHAN.

BY ADV. SRI.T.M.SREEDHARAN
SRI.V.P.NARAYANAN

RESPONDENTS: RESPONDENT/REVENUE

STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT, SECRETARIAT, THIRUVANANTHAPURAM.

BY SPL.GOVT. PLEADER FOR TAXES SRI V.V. ASOKAN

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 03/04/2007, THE COURT ON 13/04/2007 DELIVERED THE FOLLOWING:

K.S. RADHAKRISHNAN, Ag. C.J & M.N. KRISHNAN, J.

S. T. Rev. No 122 of 2007

Dated: 13th April, 2007.

JUDGMENT

Radhakrishnan, Ag. C.J.

Petitioner is a small scale industrial unit engaged in the manufacture of hospital furniture and allied goods and is an assessee borne on the files of the Sales Tax Officer, II Circle, Thalassery. For the assessment year 2002-2003 final assessment was completed on 20.08.2004 under Section 17 (3) of the Kerala General Sales Tax Act, 1963 fixing total and taxable turnover of Rs 58,28,230/- and the taxable turnover declared by the petitioner was Rs 48,13,794.35. The addition was mainly due to defects in the delivery notes used for the transportation of goods prior to sale and the enhancement of the turnover is on the basis of the defects in the delivery notes produced which is evident from the pre-assessment notice dated 20.02.2004. Assessment was later finalised as per the assessment order dated 28.2.2004. Assessee filed appeal against the said order before the Appellate Assistant Commissioner,

Commercial Taxes, Kannur. Appeal was disposed of by order dated 23.8.2004. The addition was modified and reduced by the Appellate Authority. Pursuant to the order of the first appellate authority, assessing authority passed revised order dated 9.11.2004 modifying the assessment and reducing the turnover to Rs 55,75,655/-.

2. The Deputy Commissioner, Commercial Taxes, Kannur later issued notice dated 29.7.2005 under Section 35 of the Act stating that since the assessee had suppressed the purchase turnover the assessee is not entitled to get exemption. Assessee then filed detailed reply dated 24.8.2005. Later Deputy Commissioner passed an order dated 3.9.2005 setting aside the order dated 28.2.2004 of the assessing officer and remitting the matter back to the assessing authority for fresh consideration. Assessee took up the matter in appeal before the Tribunal. Tribunal held that the assessee is not entitled to get exemption available under SRO No 1729 of 1993 in view of SRO No 295 of 1998. Aggrieved by the same this revision petition has been preferred.

3. Shri T.M. Sreedharan, counsel appearing for the petitioner submitted that the authorities below have committed an error in

interpreting the notification, SRO No 1729 of 1993 as modified by SRO 295/1998. Counsel submitted that in the absence of any unaccounted purchase of sales leading to evasion of tax and resulting in penalty proceedings established for the year 2002-2003, there is no justification in denying exemption to the petitioner's unit. Counsel took us through the modified SRO 295/1998, Section 47 of the Kerala General Sales Tax Act, 1963 and other allied provisions.

4. Shri V.V. Asokan, Special Government Pleader for Taxes, on the other hand, supported the order passed by the authorities below and submitted that the assessee is not entitled to get exemption since he had committed offence by producing incorrect and incomplete accounts.

5. The question that is posed for consideration in this case is whether the assessee is entitled to get SSI exemption on the basis of SRO No 1729/1993. Amendment was made to SRO No 1729 of 1993 by SRO No 295/1998 by the Government in exercise of the powers conferred under section 10 of the Act. The amendment introduced is as follows:

> "(x) industrial units in respect of which an offence of suppression of purchase or sales turnover is detected shall be debarred from availing of exemption under this notification from

> the date of detection of the offence. But industrial units which admit the offence, compound the same and pay the compounding fee under Section 47 of the Kerala General Sales Tax Act, 1963 and twice the tax on the suppressed turnover shall be permitted to continue to avail themselves of the exemption."

Revenue took up the stand that in view of SRO No 295/98 assesssee is not eligible to get exemption as per SRO No 1729 of 1993 since the assessee has made suppression of purchase of sales turnover and the same was detected by the assessing authority. Revenue therefore has taken up the stand that industrial units in respect of which an offence of suppression of purchase or sales turnover is detected shall be debarred from availing of exemption under SRO 1729/93 from the date of compounding of the offence. However, industrial units which admit the offence can pray for compounding the same and pay the compounding fee under section 47 of the Act and on payment of twice the tax on the suppressed turnover the assessee can be permitted to avail themselves to the exemption.

6. Chapter VIII of the Act deals with offences and penalties. Section 45A deals with imposition of penalty by officers and authorities. Section 47 deals with composition of offences. The mere fact that the assessing authority has noticed the suppression

of turnover does not ipso facto leads to the conclusion that the assessee had committed offence as per Chapter VIII of the Act and the proceedings initiated against the assessee. No notice was issued to the assessee saying that he had committed any offence. If any such notice has been issued the assessee can apply for compounding as provided under Section 47 of the Act. On compounding the offence the benefit of exemption would be available. In the absence of any offence following an order it would not be possible for the assessee to pray for compounding of the offence. So far as this case is concerned, no notice has been issued to the assessee at any time. In our view, Revenue cannot deny the facility of exemption available under SRO 1729/93 to the assessee on the ground of SRO 295/98. Only in case where it is established by an order that the assessee had committed an offience the authority can compound the same under SRO 295/98. Assessee is disabled from getting the benefit of the above notification. So far as this case is concerned there is no order to the effect that the assessee had committed the offence. Hence, in our view, the assessee is entitled to get the benefit of SRO 1729/93. Hence the orders passed by the authorities below including that of

the Tribunal are set aside and we declare that the assessee is entitled to get the benefit of SRO 1729/93 from the date of amendment effected as per SRO 295/98. The revision petition is allowed.

Sd/-

K.S. RADHAKRISHNAN
Ag. Chief Justice

Sd/-
M.N. KRISHNAN
Judge

13/04/2007
en/

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